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9
10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 JENNIE QUAN, individually and as
13 successor in interest to BENJAMIN
14 CHIN, deceased,

15 Plaintiff,

16 v.

17 COUNTY OF LOS ANGELES;
18 MARISOL BARAJAS; HECTOR
19 VAZQUEZ; and DOES 3-10, inclusive,
20 Defendants.

Case No. 2:24-cv-04805-MCS(KSx)

**DEFENDANTS' NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT, OR
PARTIAL SUMMARY JUDGMENT**

[Filed Concurrently With: 1)
Defendants' Separate Statement of
Uncontroverted Facts in Support of
Defendants' Motion for Summary
Judgment, or Partial Summary
Judgment; 2) Declarations of Marisol
Barajas, Hector Vazquez, Kyle Toves,
Ed Flosi, and Jerad J. Miller; 3)
[Proposed] Order; 4) [Proposed]
Judgment

[Assigned to Hon. Mark C. Scarsi,
Courtroom "7C"]

23 TO THE HONORABLE COURT, PARTIES AND THEIR ATTORNEYS OF
24 RECORD:

25 PLEASE TAKE NOTICE that on November 3, 2025 at 9:00 a.m., or as soon
26 thereafter as the matter may be heard, in "7C" of the above-entitled Court, Defendants
27 COUNTY OF LOS ANGELES, MARISOL BARAJAS AND HECTOR VAZQUEZ
28 (collectively, "Defendants") will and hereby do move this Court for summary

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1 judgment on the Complaint for Damages filed by Plaintiff JENNIE QUAN in favor
2 of the Defendants and against Plaintiff.

3 This Motion is brought pursuant to Rule 56 of the Federal Rules of Civil
4 Procedure on the grounds that MARISOL BARAJAS and HECTOR VAZQUEZ are
5 entitled to qualified immunity, and the Defendants are therefore entitled to judgment
6 as a matter of law on all causes of action.

7 This Motion will be based upon this Notice, the attached Memorandum of
8 Points and Authorities, the Separate Statement of Uncontroverted Material Facts, the
9 Compendium of Documentary Evidence, and the Declarations of Jerad J. Miller,
10 Deputy Kyle Toves, MARISOL BARAJAS and HECTOR VAZQUEZ, filed and
11 served concurrently herewith, the Court's records and file herein, and upon all further
12 oral and documentary evidence as may be presented at the time of the hearing on this
13 Motion.

14 DATED: September 29, 2025 HURRELL CANTRALL LLP
15
16

17 By: /s/ Jerad J. Miller
18 THOMAS C. HURRELL
19 JANET J. HUR
20 JERAD J. MILLER
21 Attorneys for Defendants, COUNTY OF
22 LOS ANGELES, MARISOL BARAJAS
23 and HECTOR VAZQUEZ
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT

This matter arises from Los Angeles County Sheriff’s Department Deputy MARISOL BARAJAS’ (“Deputy Barajas”) and Detective HECTOR VAZQUEZ’S (“Deputy Vazquez”) (collectively, “Defendant Deputies”) shooting of Benajamin Chin (“Decedent”) in self-defense on June 19, 2023. Plaintiff JENNIE QUAN, the mother of the Decedent and his successor-in-interest, brings this lawsuit against the COUNTY OF LOS ANGELES (“County”), Deputy Barajas and Detective Vazquez (collectively, “Defendants.”) The lawsuit alleges the following claims: 1) Unreasonable Search and Seizure – Excessive Force (42 U.S.C. § 1983) (Deputy Barajas, Detective Vazquez, and DOE DEPUTIES); 2) Unreasonable Search and Seizure – Denial of Medical Care (42 U.S.C. § 1983) (Deputy Barajas, Detective Vazquez, and DOE DEPUTIES); 3) Municipal Liability – Ratification (42 U.S.C. § 1983) (County and DOES 6 – 10); 4) Municipal Liability – Failure to Train (42 U.S.C. § 1983) County and DOES 6 – 10); 5) Municipal Liability – Unconstitutional Custom or Policy (42 U.S.C. § 1983) (County and DOES 6 – 10); 6) Battery (Wrongful Death) (County, Deputy Barajas, Detective Vazquez, and DOE DEPUTIES); 7) Negligence (Wrongful Death) (all Defendants); 8) Violation of Cal. Civil Code § 52.1 (Bane Act) (all Defendants).

On this date, Los Angeles County Sheriff’s Department deputies, including Defendants Deputy Marisol Barajas and Detective Vazquez, responded to a call involving a suspect (the Decedent) wearing bullet-proof vest and carrying an AR-15 around Diamond Bar Boulevard and Crooked Creek Drive. Prior to deputies arriving at the scene, Deputy Barajas and Detective Vazquez received dispatch reports that Plaintiff fired his assault rifle in the air multiple times, and that there was a stabbing victim. Deputies arrived on the scene and positioned themselves and their vehicles in front of the Decedent on Diamond Bar Boulevard, and behind the Decedent on Crooked Creek Drive as he traveled northbound on Diamond Bar Boulevard. After

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1 ignoring numerous commands to drop his rifle and dangerously proceeding forward
2 toward deputy and civilian vehicles with at least one hand on his rifle, Deputy Barajas
3 and Detective Vazquez fired several shots at the Decedent. The Decedent collapsed
4 after being struck by multiple rounds. Medical aid was immediately rendered to the
5 Decedent by the deputies on-site. Paramedics arrived less than five minutes after the
6 final shot to render aid to the Decedent. The Decedent was transported to Pomona
7 Valley Hospital, where he was pronounced dead later that night.

8 Plaintiff alleges that Deputy Barajas' and Detective Vazquez's use of force
9 during the incident was excessive and violative of the Decedent's constitutional
10 rights. Plaintiff, as an individual and successor-in-interest, now brings federal claims
11 for Unreasonable Search and Seizure – Excessive Force and Unreasonable Search and
12 Seizure – Denial of Medical Care (42 U.S.C. § 1983), and state law claims for Battery
13 (Wrongful Death), Negligence (Wrongful Death) and Violation of Cal. Civil Code §
14 52.1 (Bane Act) against Deputy Barajas and Detective Vazquez. Moreover, Plaintiff
15 brings claims for Municipal Liability – Ratification (42 U.S.C. § 1983), Municipal
16 Liability – Failure to Train (42 U.S.C. § 1983), Municipal Liability – Unconstitutional
17 Custom or Policy (42 U.S.C. § 1983), Battery, Negligence and Violation of Cal. Civil
18 Code § 52.1 (Bane Act) against the County.

19 The Defendant Deputies preserved the Decedent's constitutional rights by
20 using reasonable force throughout the incident and by providing immediate medical
21 care once the Decedent no longer posed a threat to deputies and nearby civilians.
22 Qualified immunity thus shields the Defendant Deputies from liability and negates
23 Plaintiff's state law causes of action because reasonable force was used. Additionally,
24 Plaintiff has produced no evidence to support her theories of Municipal Liability
25 against the County. As a result, all Defendants are entitled to summary judgment as
26 to all causes of action brought against them.

II. STATEMENT OF UNCONTROVERTED MATERIAL FACTS

A. Use of Force By Deputy Barajas

Deputy Barajas was a deputy for the Los Angeles County Sheriff's Department on the day of the incident. (Separate Statement of Uncontroverted Material Fact ("SSUMF") No. 1.) On June 19, 2023, she responded with lights and sirens (Code-3) to a call regarding a man armed with an AR-15 style rifle walking around the Diamond Bar Boulevard area. (SSUMF No. 4.) She traveled southbound on Diamond Bar Boulevard, and the Decedent appeared on the same street walking northbound. (SSUMF No. 5.) The Decedent was estimated to be approximately 15 - 20 feet from Deputy Barajas' vehicle when she turned on Diamond Bar Boulevard. (SSUMF No. 6.) Next to Deputy Barajas was a civilian in a Tesla, who was in the direct path of the Decedent heading northbound. (SSUMF No. 29.) Behind Deputy Barajas were additional deputies, preventing her from moving her vehicle to create more distance between herself and the Decedent. (SSUMF No. 8.)

The Decedent continued to move northbound towards deputies and civilians with his AR-15 slung around his shoulder to his right-side. (SSUMF No. 7.) Believing that the Decedent was an imminent dangerous threat to civilians, deputies and herself, due to the radio calls received and her observations of the Decedent, Deputy Barajas exited her vehicle and drew her firearm. (SSUMF No. 9.) She used the driver-side door as cover and stated over her radio that she was detaining the suspect. (SSUMF No. 10.) Deputy Barajas then ordered the Decedent to drop his weapon approximately seven (7) times. (SSUMF No. 11.) The Decedent ignored Deputy Barajas' commands and continued moving northbound, progressing to within approximately 7 – 10 feet of Deputy Barajas and the civilian in the Tesla. (SSUMF No. 12.)

Deputy Barajas then fired her first shot from her service handgun at the Decedent, which appeared to have no effect on the Decedent. (SSUMF No. 14.) Deputy Barajas determined that less-lethal ammunition was not an option because the

1 Decedent posed an immediate lethal threat due to his proximity to the civilian, and
2 his bullet-proof vest would have rendered less-lethal ammunition ineffective.
3 (SSUMF No. 13.)

4 After her first shot, Deputy Barajas reassessed the situation and determined the
5 Decedent was still an imminent lethal threat because he continued to advance with his
6 rifle. (SSUMF No. 15.) Moreover, the Decedent's bullet-proof vest prevented Deputy
7 Barajas from determining whether her first shot struck and injured the Decedent.
8 (SSUMF No. 16.) Deputy Barajas then commanded the Decedent to drop his rifle an
9 eighth (8) time as he continued his approach. (SSUMF No. 17.) She then ordered the
10 Decedent to drop his weapon a ninth (9) time and begins ordering him to drop it a
11 tenth (10) time, but her order is interrupted by Detective Vazquez's first shot.
12 (SSUMF No. 18.)

13 The Decedent remained standing and capable of firing his rifle slung around
14 his shoulder, indicating to Deputy Barajas that he still remained a dangerous lethal
15 threat to civilians and deputies. (SSUMF No. 19.) While the Decedent continued
16 approaching, Deputy Barajas fired two additional shots at the Decedent. (SSUMF
17 No. 20.) Deputy Barajas recalled firing three-to-four (3-4) shots total at the Decedent,
18 but body-worn camera of the incident details that she fired three shots. (SSUMF No.
19 21.) The Decedent still remained standing with his rifle. (SSUMF No. 22.) Detective
20 Vazquez then fires the final shot, after which the Decedent is finally immobilized and
21 drops to the ground with his rifle. (SSUMF No. 23.)

22 **B. Use of Force by Detective Vazquez**

23 Detective Vazquez was on-duty in Diamond Bar, CA, when he received a
24 dispatch call concerning an Asian male with an assault rifle firing rounds in the air,
25 possibly with a bullet-proof vest, near the intersection of Crooked Creek Drive and
26 Rising Star Drive. (SSUMF Nos. 2-3.) Dispatch requested that deputies in the area
27 respond Code-3. (SSUMF No. 4.) The suspect was later determined to be the
28 Decedent. (SSUMF No. 4.) As Detective Vazquez proceeded to the incident location,

1 dispatch continued to broadcast that the Walnut Sheriff's Station had received
2 multiple calls regarding the same suspect, and that he had fired shots from his rifle.
3 (SSUMF No. 29.)

4 Due to the reports that the suspect was carrying an assault rifle, Detective
5 Vazquez grabbed his shotgun and loaded it with slug ammunition. (SSUMF No. 31.)
6 While looking for the suspect, Detective Vazquez observed an elderly Asian female
7 with blood on her hands. (SSUMF No. 32.) She approached the deputies and asked
8 us them not to harm the suspect. (SSUMF No. 33.) This was later determined to be
9 Plaintiff Jennie Quan. (SSUMF No. 32.) Although Detective Vazquez did not know
10 that the elderly Asian female was the Decedent's mother at the time of the initial
11 interaction, he believed she was acquainted with the Decedent because she asked the
12 deputies not to harm him. (SSUMF No. 34.) The Decedent's willingness to attack
13 and bloody someone he knew heightened Detective Vazquez's fears that the Decedent
14 was a threat and would be willing to use deadly force against him, other deputies or
15 civilians. (SSUMF No. 35.)

16 Deputy Carlos De La Torre then informed Detective Vazquez that the Decedent
17 was approaching Diamond Bar Boulevard. (SSUMF No. 36.) Detective Vazquez
18 observed the Decedent approximately 150-200 feet ahead of him wearing a bullet-
19 proof vest and what appeared to be an AR-15 rifle with an optical lens for improved
20 accuracy. (SSUMF No. 37.) Detective Vazquez reasonably believed that the
21 Decedent would be capable of accurately striking him, other deputies or civilians from
22 approximately 150 – 200 feet away with an AR-15 equipped with an optical lens.
23 (SSUMF No. 38.) Moreover, Detective Vazquez understood Diamond Bar Boulevard
24 to constitute a heavily trafficked roadway where significant civilian presence is likely.
25 (SSUMF No. 44.) Positioned behind the Decedent, Detective Vazquez began
26 approaching the Decedent with his shotgun. (SSUMF No. 39.) He yelled repeated
27 commands for the Decedent to drop his weapon, which the Decedent ignored while
28 continuing his pursuit on Diamond Boulevard with his AR-15 in the low-ready

1 position. (SSUMF Nos. 40-41.)

2 To prevent against the threat that the Decedent could turn around and shoot at
3 the deputies positioned where Detective Vazquez was located, Deputy Vazquez asked
4 Detective Christopher Bronowicki to use his vehicle as cover as the deputies
5 approached the Decedent. (SSUMF No. 42.) Detective Vazquez urgently pursued
6 the Decedent towards Diamond Bar Boulevard with fears that the Decedent could
7 open-fire on deputies and civilians at any point. (SSUMF No. 43.) The Decedent's
8 bullet-proof vest, AR-15 and stabbing of the Plaintiff signaled to Detective Vazquez
9 that the Decedent was ready for a violent conflict. (SSUMF No. 44.) Detective
10 Vazquez began running on foot from Crooked Creek Drive to northbound Diamond
11 Bar Boulevard behind the Decedent. (SSUMF No. 45.) His continued commands for
12 the Decedent to drop his rifle were ignored. (SSUMF No. 45.)

13 As Detective Vazquez turned the corner of Crooked Creek Drive and
14 approached Diamond Bar Boulevard, he observed civilian and deputy vehicles
15 directly in front of the Decedent's path. (SSUMF No. 46.) There was the risk of
16 crossfire from his position due to the civilian and deputy vehicles directly in front of
17 the Decedent, so he repositioned himself towards the Decedent's left-flank without
18 any cover. (SSUMF No. 47.) As he was flanking the Decedent, he heard one shot
19 from an unknown source. (SSUMF No. 48.) He observed that the Decedent had been
20 impacted because he momentarily stopped, but the Decedent then continued forward.
21 (SSUMF No. 49.) Detective Vazquez then observed the Decedent's elbow raise as if
22 to reach for his rifle, position the barrel forward, and begin firing. (SSUMF No. 50.)
23 The Decedent was approximately 10-15 feet from the civilian and deputy vehicles in
24 front of him at this point. (SSUMF No. 51.)

25 Fearing that the Decedent was going to shoot at deputies and civilians,
26 Detective Vazquez fired one round from his shotgun at the Decedent. (SSUMF No.
27 52.) The round struck the Decedent's bullet-proof vest and appeared to have no effect
28 on the Decedent. (SSUMF No. 53.) Without cover and believing that the Decedent

1 would turn towards Detective Vazquez to shoot him, Detective Vazquez fired a
2 second shotgun round at the Decedent. (SSUMF No. 54.) The Decedent fell to the
3 ground immediately after Detective Vazquez fired his second shot, with his AR-15
4 still within his wingspan. (SSUMF Nos. 55-56.) After preparing a plan to safely and
5 securely approach the Decedent, the deputies cautiously approached the Decedent,
6 handcuffed him and began rendering aid while the fire department staged. (SSUMF
7 No. 57-58.)

8 Based on the facts above, Deputy Barajas and Detective Vazquez are entitled
9 to summary judgment and protected from liability under qualified immunity because
10 the Decedent's clearly established rights were not violated by the Defendant Deputies.
11 (SSUMF Nos. 24; 59.)

12 According to police practices expert Ed Flosi, LASD deputies had a legitimate
13 law enforcement purpose and reasonable suspicion to contact and detain the
14 Decedent. (SSUMF No. 68.) The deputies' actions were consistent with current law
15 enforcement training and practices the appropriate level of force was used. (SSUMF
16 No. 69.) Further, Ed Flosi opines that LASD deputies had a legitimate law
17 enforcement purpose and probable cause to arrest decedent. (SSUMF No. 70.) A
18 reasonable officer could have an honest and strong belief that Decedent's actions were
19 in violation of California Penal Code § 148(a)(1). (SSUMF No. 71.) The deadly force
20 response by Defendants Barajas and Vasquez was appropriate and reasonable to
21 prevent a perceived imminent and credible threat of serious bodily injury or death.
22 (SSUMF No. 72.) The actions of decedent created a life-threatening situation and
23 forced the deputies to react quickly and decisively. (SSUMF No. 73.) Mr. Flosi
24 concludes that taking into consideration the facts and circumstances observed and
25 perceived by Deputy Vasquez and Deputy Barajas prior to and at the time of the
26 deadly force responses, that deadly force responses by the deputies were appropriate
27 and reasonable to prevent a perceived credible threat of injury created by the
28 Decedent's actions and behaviors. (SSUMF No. 74.) Further, the deadly force

1 responses by Deputy Vasquez and Deputy Barajas were appropriate and consistent
2 with current law enforcement training standards in consideration of the "totality of
3 circumstances" presented to them at the moments non-deadly force was used.
4 (SSUMF No. 75.)

5 **III. SUMMARY JUDGMENT STANDARD**

6 Summary judgment motions are governed by Federal Rules of Civil Procedure
7 Rule 56. The court shall grant summary judgment if the movant shows that there is
8 no genuine dispute as to any material fact and the movant is entitled to judgment as a
9 matter of law.” *Fed. R. Civ. P.* 56(a). Rule 56 also allows a court to grant partial
10 summary judgment. *See Fed. R. Civ. P.* 56(a) (“A party may move for summary
11 judgment, identifying each claim or defense—or the part of each claim or defense—
12 on which summary judgment is sought.”); *see also Allstate Ins. Co. v. Madan*, 889 F.
13 Supp. 374, 378-79 (C.D. Cal. 1995). The standard that applies to a motion for partial
14 summary judgment is the same as that which applies to a motion for summary
15 judgment. *See Fed. R. Civ. P.* 56(a); *State of Cal. ex rel. Cal. Dep’t of Toxic*
16 *Substances Control v. Campbell*, 138 F.3d 772, 780 (9th Cir. 1998). Once the moving
17 party has demonstrated that summary judgment is proper, the burden then shifts to the
18 nonmovant to show that summary judgment is not appropriate. *Celotex Corp. v.*
19 *Catrett*, 477 U.S. 317, 324 (1986). To make such a showing, the nonmovant must go
20 beyond the pleadings to designate specific facts showing there is a genuine triable
21 issue of fact. *Id.* However, “[t]he mere existence of a scintilla of evidence in support
22 of the plaintiff’s position will be insufficient; there must be evidence [presented] on
23 which the jury could reasonably find for the [non-moving party].” *Id.*, at 252.

24 **IV. THE DEFENDANT DEPUTIES ARE ENTITLED TO QUALIFIED**
25 **IMMUNITY UNDER FEDERAL LAW**

26 Plaintiff alleges that the Defendant Deputies violated the Decedent’s
27 constitutional rights through 1) Unreasonable Search and Seizure – Excessive Force
28 (42 U.S.C. § 1983); and 2) Unreasonable Search and Seizure – Denial of Medical

1 Care (42 U.S.C. § 1983). The Defendant Deputies are shielded from liability under
2 qualified immunity because no clearly established constitutional right was violated by
3 the Defendant Deputies.

4 Officials sued in their individual capacities may assert that they are entitled
5 to qualified immunity. *Pena v. Gardner*, 976 F.2d 469, 473 (9th Cir.1992) Qualified
6 immunity shields an officer from civil liability where the officer acts reasonably but
7 makes a mistake of law or fact. *Lal v. Cal.*, 746 F.3d 1112, 1116 (9th Cir. 2014).
8 A law enforcement officer is entitled to qualified immunity unless *every* reasonable
9 officer in his position would have acted differently. *Reichle v. Howards*, 566 U.S. 658
10 (2012); *Act Up!/Portland v. Bagley*, 988 F.2d 868, 871 (9th Cir. 1993). In
11 *Messerschmidt v. Millender*, 132 S. Ct. 1235, 1244 (2012), the Supreme Court
12 reiterated that “[q]ualified immunity gives government officials breathing room to
13 make reasonable but mistaken judgments, and protects all but the plainly incompetent
14 or those who knowingly violate the law.” (Internal quotation marks and citations
15 omitted). “[E]ven if the violated right was clearly established, the [Supreme] Court
16 [has] recognized that it may be difficult for a police officer fully to appreciate how
17 the legal constraints apply to the specific situation he or she faces. Under such a
18 circumstance, ‘[i]f the officer's mistake as to what the law requires is reasonable, ...
19 the officer is entitled to the immunity defense.’ ” *Blankenhorn v. City of Orange*, 485
20 F.3d 463,471 (9th Cir. 2007) (quoting *Saucier*, 533 U.S. at 205) (alteration in
21 original). Further, because “qualified immunity is ‘an immunity from suit rather than
22 a mere defense to liability ... it is effectively lost if a case is erroneously permitted to
23 go to trial.’ ” *Pearson v. Callahan*, 555 U.S. 223, 231, (2009) (quoting *Mitchell v.*
24 *Forsyth*, 472 U.S. 511, 526 (1985)).

25 For qualified immunity to apply, the Court must determine (1) whether the facts
26 show a violation of the plaintiff’s constitutional rights; and (2) whether that right was
27 “clearly established” by law at the time of the incident. *Saucier v. Katz*, 533 U.S. 194,
28 201 (2001) (*overruled on other grounds*, *Pearson v. Callahan*, 555 U.S. 223, 236

(2009). Courts are “permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.” *Id.* at 236.

A. No Clearly Established Rights were Violated by the Defendant Deputies’ Use of Force

The Defendant Deputies’ use of force in response to the Decedent’s violent actions during the incident was objectively reasonable. (SSUMF Nos. 24; 59.) To sustain a claim under 42 U.S.C. § 1983 against a defendant, the plaintiff must prove that: (1) defendant was acting under color of state law, and (2) deprived plaintiff of rights secured by the Constitution or federal statutes. *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986). The Fourth Amendment protects “against excessive force in the course of an arrest.” *Gravelet-Blondin v. Shelton* 728 F.3d 1086, 1090 (9th Cir. 2013), cert. denied, 2014 WL 684092 (2014). Evaluation of “excessive force” requires examining “the objective reasonableness of a particular use of force to determine whether it was indeed excessive.” *Id.* All claims of excessive force are analyzed under the objective reasonableness standard of the Fourth Amendment as enunciated in *Graham v. Connor*, 490 U.S. 386 (1989), and *Tennessee v. Garner*, 471 U.S. 1 (1985). Factors *Graham* sets for evaluating reasonability include: “(1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect actively resisted arrest or attempted to escape.” *Maxwell v. Cnty. of San Diego*, 697 F.3d 941, 951 (9th Cir. 2012). *Garner* considered similar factors, including the immediacy of the threat, necessity of force to safeguard officers or public, and whether officers issued a warning, assuming it was practicable. *George v. Morris*, 736 F.3d 829, 837 (9th Cir. 2013). “[A]n officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack. In these circumstances, the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect will, in fact, injure or murder the officer. The high numbers of

1 officer mortalities in recent years illustrate the unreasonableness of such a
2 notion.” (*Reynolds v. County of San Diego* (S.D.Cal.1994) 858 F.Supp. 1064, 1073.)

3 Despite these factors, “there are no per se rules in the Fourth Amendment
4 excessive force context[.]” *Mattos v. Agarano*, 661 F.3d 433, 441 (9th Cir. 2011) (en
5 banc), cert. denied, 132 S.Ct. 2682 (2012), and the court must balance “the nature and
6 quality of the intrusion on the individual’s Fourth Amendment interests against the
7 countervailing government interests at stake.” *Graham*, 490 U.S. at 397 (internal
8 quotation marks and citations omitted). Further, reasonableness is evaluated from the
9 perspective of a reasonable officer on the scene without the benefit of hindsight.
10 *Graham*, 490 U.S. at 396; *see also Saucier v. Katz*, 533 U.S. 194, 205 (2001),
11 overruled on other grounds by *Person v. Callahan*, 555 U.S. 223 (2009).
12 Consideration must be given to “the fact that police officers are often forced to make
13 split-second judgments – in circumstances that are tense, uncertain, and rapidly
14 evolving ...” *Graham*, 490 U.S. at 396-97; *Fisher v. City of San Jose*, 558 F.3d 1069,
15 1081 (9th Cir. 2009) (en banc) (same). “Thus, under *Graham*, we must avoid
16 substituting our personal notions of proper police procedure for the instantaneous
17 decision of the officer at the scene. We must never allow the theoretical, sanitized
18 world of our imagination to replace the dangerous and complex world that policemen
19 face every day.” *Gonzalez* at 813.

20 The Defendant Deputies are entitled to qualified immunity because the
21 Decedent’s rights were not so clearly established in a way that would have put every
22 reasonable officer on notice that their conduct during the shooting violated those
23 rights. As discussed in *Graham*, “objectively reasonable” use of force requires
24 examining the facts and circumstances of the circumstances confronting the deputies.
25 *Graham*, 490 U.S. at 397, 109 S.Ct. 1865. Courts look at (1) the severity of the crime
26 at issue, (2) whether the suspect posed an immediate threat to the safety of the officers
27 or others, and (3) whether the suspect actively resisted arrest or attempted to escape
28 when evaluating whether a deputy’s actions were reasonable. *Id.* at 396. Weighing

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1 the totality of circumstances leads to the inescapable conclusion that the Defendant
2 Deputies' use of force was reasonable and necessary to protect themselves and nearby
3 citizens from the threat of imminent death or substantial bodily harm. (SSUMF Nos.
4 24; 59.)

5 Each use of force by the Defendant Deputies was objectively reasonable given
6 the facts known to the Defendant Deputies prior to the encounter and the
7 ineffectiveness of warnings and lethal munitions during the shooting. (SSUMF Nos.
8 12-14; 17-23; 40; 45.) The potential crime at issue – murder – and the Decedent's
9 possession of an AR-15 and use of a bullet-proof vest posed a significant and deadly
10 threat to deputies and civilians in the vicinity. (SSUMF Nos. 4; 26-27.) All uses of
11 force ceased once the Decedent was no longer a dangerous threat. (SSUMF Nos. 25;
12 60.) Qualified immunity is thus applicable to the Defendant Deputies.

13 Deputy Barajas' use of force was reasonable at all times during the encounter
14 with the Decedent. (SSUMF No. 24.) Before responding to Diamond Bar Boulevard,
15 Deputy Barajas received dispatch calls describing the Decedent as wearing a bullet-
16 proof vest and AR-15, which she confirmed through observation when she arrived to
17 the scene. (SSUMF Nos. 4; 26-27.) The vest and rifle established that the Decedent
18 anticipated a lethal conflict with deputies. (SSUMF No. 27.) Moreover, she received
19 a dispatch call that there was a stabbing victim prior to her arrival. (SSUMF Nos. 27.)
20 In the direct path of the Decedent on Diamond Bar Boulevard were deputies and
21 civilians in vehicles. (SSUMF Nos. 28.) Deputy Barajas then issued seven (7)
22 warnings to the Decedent to drop his rifle, which he ignored while continuing his
23 advancement. (SSUMF No. 12.) It was only after the Decedent demonstrated a clear
24 intent to ignore deputy commands and came within dangerous proximity of a civilian
25 in his Tesla that Deputy Barajas discharged her firearm. (SSUMF Nos. 7-9; 12-14.)
26 The Decedent's bullet-proof vest prevented the lethal munitions from halting the
27 Decedent's approach, requiring Deputy Barajas to continue discharging her weapon
28 until the Decedent fell to the ground and dropped his rifle after Detective Vazquez's

1 second, and final, shot. (SSUMF Nos. 13-23.) Once the Decedent began falling and
2 no longer possessed a dangerous threat to deputies or civilians, Deputy Barajas
3 refrained from discharging her firearm further. (SSUMF No. 25.)

4 Moreover, Deputy Vazquez's use of force was reasonable based on the totality
5 of circumstances. (SSUMF No. 59.) After receiving a dispatch call concerning a man
6 wearing a bullet-proof vest and firing his rifle around the Diamond Bar area, Detective
7 Vazquez arrived to the scene and immediately observed the Plaintiff's hand covered
8 in blood – placing him on notice that the Decedent was willing to commit violence
9 against someone he knew. (SSUMF Nos. 4; 32-35.) Detective Vazquez then
10 proceeded to Diamond Bar Boulevard, where he observed the Decedent
11 approximately 15 – 20 feet ahead approaching deputies and civilians with his rifle in
12 the tactical low-ready position. (SSUMF Nos. 36-41) Due to the risk of cross-fire
13 from the Deputies positioned in front of the Decedent, Detective Vazquez was forced
14 to flank the Decedent without cover. (SSUMF No. 47.) Observing that the Decedent
15 was ignoring warnings from deputies and rapidly approaching civilian vehicles,
16 Detective Vazquez discharged his shotgun one (1) time. (SSUMF Nos. 45-52.)
17 Having little effect on the Decedent due to his bullet-proof vest, Detective Vazquez
18 discharged his shotgun a second and final time. (SSUMF Nos. 52-54.) The second
19 shot struck the Decedent, after which the Decedent fell to the ground. No additional
20 shots were fired after the Decedent fell to the ground. (SSUMF Nos. 55.)

21 Officers are trained that for an investigative stop of detention to be valid, there
22 must be reasonable suspicion that: (1) criminal activity may be afoot and (2) the
23 person about to be detained is connected with that possible criminal activity. (SSUMF
24 No. 76.) Under the totality of the circumstances, a reasonable officer could conclude
25 that the subject described in the call for service was involved or preparing to become
26 involved in criminal activity hence LASD deputies had a legitimate law enforcement
27 purpose and reasonable suspicion to contact and detain Decedent. (SSUMF. No. 77.)
28 Further, The deputies' actions were consistent with current law enforcement training

1 and practices. (SSUMF. No. 78.)

2 Accordingly, the Defendant Deputies are entitled to qualified immunity
3 for this cause of action because their use of force did not violate any clearly
4 established right of the Decedent.

5 **B. The Defendant Deputies Preserved the Decedent’s Rights by**
6 **Promptly Rendering Medical Care**

7 The Defendant Deputies preserved the Decedent’s constitutional rights by
8 promptly rendering him medical care after the shooting. The Due Process Clause of
9 the Fourth Amendment requires the responsible government or governmental agency
10 to provide medical care to persons...who have been injured while being apprehended
11 by the police. *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244, 103 S.
12 Ct. 2979, 2983, 77 L. Ed. 2d 605 (1983.) Due process requires that police officers
13 seek the necessary medical attention for a detainee when he or she has been injured
14 while being apprehended by either promptly summoning the necessary medical help
15 or by taking the injured detainee to a hospital.” *Maddox v. City of Los Angeles*, 792
16 F.2d 1408, 1415 (9th Cir.1986.) “A police officer who promptly summons the
17 necessary medical assistance has acted reasonably for purposes of the Fourth
18 Amendment.” *Id.* at 1415.

19 Here, the final shot is discharged at approximately 11:45:15. (SSUMF No. 60.)
20 When the Decedent fell to the ground, his rifle remained within his wingspan.
21 (SSUMF No. 57.) The deputies were unable to determine the extent of the Decedent’s
22 injuries due to his bullet-proof vest, preventing the deputies from assessing that the
23 Decedent was no longer a threat. (SSUMF No. 16.) Prior to approaching the
24 Decedent and rendering aid, the responding deputies had to ensure that the Decedent
25 would not pose a threat of harm. (SSUMF No. 57.) From approximately 11:45:15 to
26 11:47:07, the deputies developed a plan to safely and securely approach the Decedent
27 to render aid and prevent against the risk that he could retake possession of his rifle
28 and harm deputies. (SSUMF No. 57.) At approximately 11:47:17 – 11:47:39, the

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1 deputies approached the Decedent with a shield and guns drawn, and placed the
2 Decedent in handcuffs. (SSUMF No. 62.) From approximately 11:47:41 – 11:48:30,
3 the Decedent’s bullet-proof vest is un-Velcroed, his person is searched, and the
4 deputies release him from his handcuffs. (SSUMF No. 63.) Deputies then remove his
5 vest and begin cleaning the blood from his body. (SSUMF No. 64.) At approximately
6 11:49:40, paramedics from the fire department begin assisting with the Decedent’s
7 aid. (SSUMF No. 65.) At approximately 11:57:40, the Decedent is wheeled away on
8 a gurney and taken to be placed in an ambulance. (SSUMF No. 66.)

9 The Defendant Deputies fulfilled their duty of summoning prompt medical care
10 as soon as reasonably possible. (SSUMF Nos. 60-67.) Once it was reasonably safe to
11 approach the Decedent, deputies began rendering aid less than three minutes after the
12 final shot was discharged. (SSUMF Nos. 65.) Moreover, the fire department arrived
13 and began assisting with the Decedent’s aid approximately four minutes and thirty
14 seconds after the final shot was discharged. (SSUMF No. 65.) Paramedics placed him
15 on a gurney and began transporting him to an ambulance less than thirteen minutes
16 after the final shot. (SSUMF No. 66.) It is clear that the Defendant Deputies rendered
17 aid in a reasonable and swift manner once the Decedent was determined to no longer
18 be a threat. (SSUMF No. 67.)

19 Police practices expert Ed Flosi concluded that there is no independent and
20 objective evidence to support a claim that the Defendant Deputies denied the
21 Decedent medical care. (SSUMF No.79.) A review of the material and video
22 evidence reveals that the last shot was fired at approximately 11:45:15. (SSUMF No.
23 80.) The approach to the Decedent began at approximately 11:47:07. (SSUMF No.
24 81.) LASD deputies make contact with the Decedent to render aid at approximately
25 11:47:17. (SSUMF No. 82.) The Decedent was handcuffed at approximately
26 11:47:40. (SSUMF No. 83.) A deputy confirmed that the fire department personnel
27 was responding at 11:47:58. (SSUMF No. 84.) LASD deputies start rendering
28 medical aid at approximately 11:48:16. (SSUMF No. 85.) The fire department

1 personnel are on scene at approximately 11:48.42. (SSUMF No. 86.) After being
2 shot, the Decedent fell next to the rifle that he was wielding. (SSUMF No. 87.) There
3 was a legitimate tactical need to get a shield and contact team formed with non-deadly
4 and deadly force options prior to moving to whether the Decedent fell. (SSUMF No.
5 88.) It is also noted that there was information that the Decedent had stabbed another
6 person and the edged weapon was unaccounted for. (SSUMF No. 89.) It is
7 demonstrably false that LASD deputies denied the Decedent of medical care (SSUMF
8 No. 90.)

9 Accordingly, the Defendant Deputies are entitled to qualified immunity for this
10 cause of action.

11 **V. THE DEFENDANT COUNTY OF LOS ANGELES IS NOT LIABLE**
12 **UNDER MONELL**

13 **A. Plaintiff Cannot Demonstrate the Threshold Underlying Violation**
14 **of the 4th Amendment to Support a Monell Theory**

15 If a plaintiff did not suffer an underlying constitutional deprivation by a deputy
16 or officer of a government entity, the plaintiff's *Monell* claim automatically fails. 9th
17 Cir. Mod. Instruct. 9.8. In *Los Angeles v. Heller*, 475 U.S. at 799, the Supreme Court
18 held that if a person has suffered no constitutional injury at the hands of the individual
19 police officer, the fact that departmental regulations might have authorized the
20 unconstitutional conduct is "quite beside the point." (See also *Pallottino v. City of*
21 *Rio Rancho*, 31 F.3d 1023, fn. 1 (10th Cir. 1994) (plaintiff claimed the City had a
22 policy or custom of displaying deliberate indifference, but since there was no
23 underlying violation by its officers, the City could not be liable); *Hinton v. City of*
24 *Elwood*, 997 F.2d 774, 782 (10th Cir. 1993); *Schulz v. Long*, 44 F.3d 643, 650 (8th
25 Cir. 1995) (where plaintiff alleged the municipality failed to have in place a custom
26 or policy of training officers, the municipality could not be liable if there was no
27 underlying constitutional violation by the officer); and *Rivera v. Rhode Island*, 402
28 F.3d 27, 39 (1st Cir. 2005) (as Plaintiff failed to establish a constitutional violation,

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1 the *City of Canton* failure to train claim likewise failed).

2 As briefed above, there is no basis upon which Plaintiff can show any 4th
3 Amendment violation by the deputies. (SSUMF Nos. 24; 59.) Without a viable
4 underlying 4th Amendment claim, there can be no municipal liability. Further, police
5 practices expert, Ed Flosi, concludes the deadly force responses by the deputies were
6 appropriate and reasonable to prevent a perceived credible threat of injury created by
7 Decedent's actions and behaviors. (SSUMF No. 91.) The deadly force responses by
8 Vasquez and Barajas were appropriate and consistent with current law enforcement
9 training standards in consideration of the "totality of circumstances" presented to them
10 at the moments non-deadly force was used. (SSUMF No. 92.) Therefore, Plaintiff's
11 third, fourth, and fifth causes of action fail.

12 **B. Even if Plaintiff can Demonstrate a Viable 4th Amendment Claim,**
13 **Plaintiff has no Evidence to Support any Monell Theory**

14 Plaintiff cannot show that the County or Deputies are liable for this incident
15 per any *Monell* theory. Local governments are "persons" subject to liability under 42
16 U.S.C. § 1983 where official policy or custom causes a constitutional tort. *Monell v.*
17 *New York City Dept. of Social Services*, 436 U.S. 658, 690 (1978). However, a city or
18 county may not be held vicariously liable for the unconstitutional acts of its employees
19 under the theory of *respondeat superior*. *Board of County Comm'rs v. Brown*, 520
20 U.S. 397, 403 (1997); *Monell*, 436 U.S. at 691; *Fuller v. City of Oakland*, 47 F.3d
21 1522, 1534 (9th Cir. 1995). To impose municipal liability under § 1983, a plaintiff
22 must show: (1) that the plaintiff possessed a constitutional right of which he or she
23 was deprived; (2) that the municipality had a policy; (3) that this policy amounts to a
24 deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is
25 the moving force behind the constitutional violation. *Plumeau v. School Dist. #40*
26 *County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997). If plaintiffs cannot point to a
27 specific policy that was the moving force, which they cannot, they must show that the
28 practices at the WCPD are "persistent and widespread...permanent and well-

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settled.” *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 167-68 (1970). Absent competent evidence demonstrating that the City of W.C. and Chief Bryden had a policy, practice, or custom that *caused* the alleged 4th Amendment constitutional violation, the City of W.C. and Chief Bryden cannot be liable for monetary damages in a § 1983 suit. *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 166 (1993) (“a municipality ... cannot be held liable [under § 1983] unless a municipal policy or custom caused the constitutional injury”). plaintiffs cannot provide any evidence of an “express policy of the entity” or a practice of the WCPD which is “so permanent and well-settled as to constitute a ‘custom or usage’ with the force of law.” *Monell*, 436 U.S. at 691. Neither are plaintiffs able to provide any evidence that shows that what the Officers did in response to Banta's deadly threat was improper. These claims clearly fail. Plaintiffs cannot establish the County was deliberately indifferent to the known or obvious consequences of its failure to train its officers, which generally requires a Plaintiff to prove prior incidents. *Mueller v. Aufer*, 700 F.3d 1180, 1194 (9th Cir. 2012).

Here, Plaintiff cannot present any evidence of prior incidents of during trial or any evidence that the County had a policy, practice, or custom that *caused* the alleged 4th Amendment constitutional violation. (SSUMF Nos. 24; 59.) Thus, Plaintiff failed to establish deliberate indifference as a matter of law, and the County is entitled to judgment. Further, police practices expert Ed Flosi concludes that there is no objective independent evidence in the record that LASD failed to adequately train the involved deputies or that LASD maintains unconstitutional customs, practices, and/or policies. (SSUMF No. 93.)

VI. PLAINTIFF’S STATE LAW CLAIMS ARE BARRED BY QUALIFIED IMMUNITY

The Defendant Deputies cannot be found liable for Plaintiff’s state law claims if qualified immunity is granted. The determination that an officer acted reasonably and is entitled to qualified immunity bars state law claims. See *Martinez v. County of*

1 *Los Angeles* (1996) 47 Cal.App.4th 334; *Edson v. City of Anaheim* (1998) 63
2 Cal.App.4th 1269. Here, Plaintiff's claims for Negligence, Battery, and the Bane Act
3 are barred because the Defendant Deputies' reasonable use of force requires the
4 application of qualified immunity.

5 **A. Negligence & Battery Claims**

6 The Defendants are shielded from Plaintiff's state law claims for Negligence
7 and Battery because the Defendant Deputies' of force during the incident was
8 reasonable. "Except when otherwise provided by law, public employees in California
9 are statutorily liable to the same extent as private persons for injuries caused by their
10 acts or omissions, subject to the same defenses available to private persons." *Hayes*
11 *v. Cty. of San Diego*, 57 Cal.4th 622, 628-29 (2013) (citing *Cal. Gov't Code* § 820).
12 "[T]o prove facts sufficient to support a finding of negligence, a plaintiff must show
13 that defendant had a duty to use due care, that he breached that duty, and that the
14 breach was the proximate or legal cause of the resulting injury." *Id.* at 629, 160
15 Cal.Rptr.3d 684. The California Supreme Court "has long recognized that peace
16 officers have a duty to act reasonably when using deadly force." *Id.* "Law enforcement
17 personnel's tactical conduct and decisions preceding the use of deadly force are
18 relevant considerations under California law in determining whether the use of deadly
19 force gives rise to negligence liability." *Id.* at 639, 160 Cal.Rptr.3d 684, 305 P.3d 252.
20 "Such liability can arise, for example, if the tactical conduct and decisions show, as
21 part of the totality of the circumstances, that the use of deadly force was
22 unreasonable." *Id.*

23 To prevail on a claim for Battery by a peace officer, a plaintiff must prove (1)
24 the officer intentionally touched the plaintiff; (2) the officer used unreasonable force
25 to arrest, prevent the escape of, or overcome the resistance of the plaintiff; (3) the
26 plaintiff did not consent to the use of that force; (4) the plaintiff was harmed; and (5)
27 the officer's use of unreasonable force was a substantial factor in causing the
28 plaintiff's harm. *Brown v. Ransweiler*, 171 Cal. App. 4th 516, 526-28 (2009); *Edson*

1 *v. City of Anaheim*, 63 Cal. App. 4th 1269, 1272 (1998). “A state law battery claim
2 is a counterpart to a federal claim of excessive use of force. In both, a plaintiff must
3 prove that the peace officer's use of force was unreasonable.” *Id.* at p. 527.

4 Here, a finding that the Defendant Deputies acted reasonably during the
5 encounter will shield the Defendants from Plaintiff’s state law claims because
6 reasonable conduct negates both causes of action. If the Defendant Deputies’ conduct
7 was reasonable, then there is no resulting breach of the Defendant Deputies’ standard
8 of care. Similarly, Plaintiff’s cause of action for Battery will fail because Battery
9 requires unreasonable force. The analysis of Plaintiff’s federal claim for
10 Unreasonable Search and Seizure – Excessive Force clearly demonstrates that the
11 Defendant Deputies’ use of force was reasonable at all times, and no violation of the
12 Decedent’s clearly established rights occurred. (SSUMF Nos. 24; 59.) Accordingly,
13 the Court should grant summary judgment for the Defendants for Negligence and
14 Battery.

15 **B. Bane Act (Cal. Civil Code § 52.1)**

16 The Bane Act, California Civil Code § 52.1, authorizes a claim for relief against
17 any “person or persons, whether or not acting under color of law, [who] interferes by
18 threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or
19 coercion, with the exercise or enjoyment by any individual or individuals of rights
20 secured by the Constitution or laws of the United States, or of the rights secured by
21 the Constitution or laws of this state[.]” *Cal. Civ. Code* § 52.1(a)-(b). “The elements
22 of a section 52.1 excessive force claim are essentially identical to those of a § 1983
23 excessive force claim.” *Knapps v. City of Oakland*, 647 F.Supp.2d 1129, 1168 (N.D.
24 Cal. 2009); *Gomez v. City of Fremont*, 730 F.Supp.2d 1056, 1068 (N.D. Cal. 2010).
25 “[A] successful claim for excessive force under the Fourth Amendment provides the
26 basis for a successful claim under § 52.1.” *Chaudhrey v. City of Los Angeles*, 751
27 F.3d 1096, 1105-06 (9th Cir. 2014). “[T]he ‘reasonableness’ inquiry in an excessive
28 force case is ... whether the officers' actions are ‘objectively reasonable’ in light of

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1 the facts and circumstances confronting them, without regard to their underlying
2 intent or motivation.” *Reese v. Cnty. of Sacramento*, 888 F.3d 1030, 1045 (9th Cir.
3 2018). “A mere intention to use force that the jury ultimately finds unreasonable—
4 that is, general criminal intent—is insufficient.” *United States v. Reese*, 2 F.3d 870,
5 885 (9th Cir. 1993). Rather, the jury must find that the defendants “intended not only
6 the force, but its unreasonableness, its character as ‘more than necessary under the
7 circumstances.’ ” *Id.* But it is not necessary for the defendants to have been “thinking
8 in constitutional or legal terms at the time of the incidents, because a reckless
9 disregard for a person's constitutional rights is evidence of a specific intent to deprive
10 that person of those rights.” *Reese* at 1045.

11 The Defendants are entitled to judgment as a matter of law on Plaintiff’s Bane
12 Act claim because, as outlined above, the Defendant Deputies’ conduct during the
13 encounter was reasonable. (SSUMF Nos. 24; 59.) Plaintiff cannot establish that the
14 Defendant Deputies violated the Decedent’s constitutional rights since reasonable
15 force was used, and a claim under the Bane Act cannot succeed without such a
16 showing. As a result, the proper remedy is to grant the Defendant Deputies’ motion
17 for summary judgment on the Bane Act.

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1 **VII. CONCLUSION**

2 Based on the foregoing, the Court should grant the Defendants' motion for
3 summary judgment as to all causes of action.

4 DATED: September 29, 2025 HURRELL CANTRALL LLP

5
6
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